

U.S. Department of Justice  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A72 094 386 - San Francisco

Date:

In re: MARIA SERAPIA GALAN BARRETT

APR 5 1996

IN DEPORTATION PROCEEDINGS

APPEAL

**INDEX**

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -  
Nonimmigrant - remained longer than permitted

APPLICATION: Suspension of deportation under section 244(a)(3)

ORDER:

PER CURIAM. The respondent has timely appealed the Immigration Judge's denial of her application for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1254(a)(3). The appeal is dismissed. The request for oral argument is denied.

In order to establish eligibility for suspension of deportation under section 244(a)(3) of the Act, an alien must prove that he or she has been physically present for a continuous period of not less than 3 years immediately preceding the application; that he or she has been battered or subjected to extreme cruelty in the United States by a spouse or a parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident who has been battered or subjected to extreme cruelty in the United States by such United States citizen or lawful permanent resident parent); that during such time in the United States the alien was and is a person of good moral character; and that he or she is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to the alien's United States citizen or lawful permanent resident parent or child.

In the instant case, the female respondent, who is a native and citizen of the Philippines, is the spouse of a United States citizen. There is no issue regarding the requisite residency or good moral character. Because the respondent does not allege that she was "battered" by her United States citizen spouse, the critical issue before us is whether she was subjected to "extreme cruelty" by her spouse. We further observe that because the Immigration Judge made no finding as to whether the respondent's

deportation would result in extreme hardship to her and we find the issue of "extreme cruelty" dispositive, we also will not address whether the respondent has shown that extreme hardship would result from her deportation.

We find it desirable at this juncture to point out that no statutory or regulatory definition of "extreme cruelty" has been provided to assist us in the application of this statutory provision and that we do not find it necessary to specifically define this term to adjudicate the case now before us. We do, however, find it beneficial to observe that it is well recognized that many marriages end in divorce and that when a marital separation occurs one (or both) of the parties often inflicts emotional pain on the other. In interpreting the statutory requirement that an alien have been "subjected to extreme cruelty," we also are not unmindful of the fact that this type of relief was created in conjunction with relief for a spouse who has been battered. In this context, it would be untenable to conclude that the intent was to provide suspension of deportation under this provision on the mere showing that an alien was without fault in a marital separation.

Returning to the record in this case, the respondent contends that she was subjected to abuse by her United States citizen spouse. She has described the acts she alleges were abusive in a statement attached to her suspension application, but did not give details of the alleged abuse in her testimony at the deportation hearing. In her statement the respondent maintains that her United States citizen husband verbally demanded that she engage in sexual practices she found shocking and repulsive, giving as an example his verbal demands that she engage in sexual intercourse with him in the presence of another woman and his desire that she "watch pornographic movies and use sexual devices" she considered "abhorrent." She contends that her husband then began to drink more and became "more aggressive, demanding and abusive." She relates that her husband's requests were completely "against her moral character and cultural upbringing" and that he ultimately left her when she refused to comply with his requests.


We recognize that it is likely that the interaction between the respondent and her United States citizen husband resulted in personal emotional trauma. We empathize with the respondent's plight and in no way mean to suggest that the unexpected demands of her husband she has generally described, especially if more specifically chronicled, might not provide a reasonable or legitimate reason for a legal termination of the marriage without

fault on her part. In addition, we acknowledge that it is no doubt difficult for the respondent to testify in detail concerning intimate events within her marriage which she considers humiliating.

Nevertheless, we must base our decision regarding the respondent's eligibility for suspension of deportation on the limited information provided. For example, it would be improper for us to speculate as to the number of times the respondent's husband made the verbal demands described or the intervals between such demands. Similarly, we are unable to accurately determine the period spanned by these demands. We only know that the respondent in her written statement relates that she and her husband were married in March 1992 and "enjoyed some happy months," while she testified simply that they separated during 1992 (Tr. at 8). We also note that there is no independent evidence of record which provides a more complete picture of the relevant circumstances. Consequently, on the limited information before us we must find that the respondent has not shown that the verbal abuse and understandable clash of moral values she experienced rise to the level of extreme cruelty required for suspension of deportation under section 244(a)(3) of the Act. Thus, she has not met her burden of proving statutory eligibility for the relief sought.

Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. In the event of failure to so depart, the respondent shall be deported as provided in the Immigration Judge's order.

  
FOR THE BOARD